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DEC 12 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA****CHRISTOPHER SOGHOIAN**1725 Irving Street, NW
Washington, DC 20010,

Plaintiff,

v.

**OFFICE OF MANAGEMENT
AND BUDGET**725 17th Street, NW
Washington, DC 20530,

Defendant.

Case: 1:11-cv-02203

Assigned To : Jackson, Amy Berman

Assign. Date : 12/12/2011

Description: FOIA/Privacy Act

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 522. Plaintiff Christopher Soghoian ("Plaintiff") seeks injunctive and other appropriate relief for the processing and release of agency records related to "graduated responses" to subscriber copyright infringement requested by Plaintiff from Defendant Office of Management and Budget ("OMB").

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

3. Plaintiff Christopher Soghoian resides in Washington, DC. Plaintiff is a Graduate Fellow at the Center for Applied Cybersecurity Research at Indiana University and a Ph.D. Candidate at the School of Informatics and Computing at Indiana University.

4. Plaintiff's academic research is focused on the relationship between law enforcement agencies and communications companies, such as Internet Service Providers and telephone carriers. In addition to his role as an academic researcher, Plaintiff is also a member of the media and self-publishes original, investigative journalism at his blog, Slight Paranoia (<http://paranoia.dubfire.net>). Plaintiff's research and investigative reporting is widely cited in the media by academics and industry experts, and it was also cited last year by Judge Alexander Kozinski in his dissent in *United States v. Pineda-Moreno*, 617 F.3d 1120, 1125 (9th Cir. 2010) (Kozinski, J., dissenting).

5. Defendant Office of Management and Budget is an Office of the Executive Branch of the United States Government. OMB is an "agency" within the meaning of 5 U.S.C. § 552(f)(1).

The "Graduated Response" Program

6. On July 7, 2011, after years of negotiations, Internet Service Providers, including AT&T, Cablevision, Comcast, Verizon, and Time Warner Cable, announced a private agreement with the major trade associations for movies and music – the Motion Picture Association of America ("MPAA") and the Recording Industry Association of America ("RIAA") – as well as organizations representing independent filmmakers and record companies, to adopt a uniform procedure for notifying customers about repeated instances of digital copyright infringement. Ben Sisario, *Internet Providers to Help*

Thwart Online Piracy, N. Y. TIMES (July 7, 2011, 11:12 AM),

<http://mediadecoder.blogs.nytimes.com/2011/07/07/internet-providers-to-help-thwart-online-piracy/>.

7. According to multiple sources, the White House was instrumental in encouraging the parties to reach an agreement. Greg Sandoval, *Exclusive: Top ISPs Poised to Adopt Graduated Response to Piracy*, CNET NEWS (June 22, 2011, 5:27 PM), http://news.cnet.com/8301-31001_3-20073522-261/exclusive-top-isps-poised-to-adopt-graduated-response-to-piracy/.

8. The White House's involvement in the graduated response program is a matter of great public interest. See David Kravets, *U.S. Copyright Czar Cozied Up to Content Industry, E-Mails Show*, WIRED (Oct. 14, 2011 6:30 AM), <http://www.wired.com/threatlevel/2011/10/copyright-czar-cozies-up/>.

Plaintiff's FOIA Request

9. By letter sent by e-mail to Defendant OMB's FOIA Officer Dionne Hardy on June 23, 2011, Plaintiff requested under FOIA records concerning meetings related to discussions about the "graduated responses" to subscriber copyright infringement created between December 1, 2009 and June 22, 2011. Specifically, Plaintiff requested any communications, documents, and notes from meetings related to discussions between the Office of the U.S. Intellectual Property Enforcement Coordinator and any federal agency, the National Cable and Telecommunications Association ("NCTA"), AT&T, Verizon, Time Warner Cable, CableVision, Charter Communications, Comcast, and Qwest Communications, the RIAA and MPAA, and any individual record and movie studios regarding "graduated responses" to subscriber copyright infringement.

10. On information and belief, OMB received Plaintiff's letter described in ¶ 9 on June 23, 2011.

11. By letter to Plaintiff dated September 30, 2011, OMB notified Plaintiff that it had located 205 pages of documents responsive to Plaintiff's request. OMB released 189 of those pages, replete with redactions, and withheld the other sixteen pages in full. OMB notified Plaintiff that it made the redactions pursuant to three FOIA exemptions, 5 U.S.C. § 552(b)(4), (b)(5) and (b)(6), and that it omitted the sixteen pages in full pursuant to FOIA exemption 5 U.S.C. § 552(b)(5). OMB advised Plaintiff of his right to file an administrative appeal of OMB's adverse determination.

12. By letter sent by e-mail to OMB's FOIA Officer dated October 11, 2011, Plaintiff appealed OMB's determination to withhold and redact requested records.

13. On information and belief, OMB received Plaintiff's letter of appeal on October 11, 2011.

14. By letter to Plaintiff dated November 1, 2011, OMB stated that it had granted themselves a ten working day extension to respond to the FOIA appeal.

15. To date, OMB has not issued a determination in response to Plaintiff's administrative appeal under FOIA.

16. OMB has violated the applicable statutory time limit for rendering decisions on administrative appeals under the FOIA.

17. Plaintiff has exhausted the applicable administrative remedies.

18. OMB has wrongfully withheld requested records from Plaintiff.

CAUSE OF ACTION

**Violation of the Freedom of Information Act for
Wrongful Withholding of Agency Records**

19. Plaintiff repeats and re-alleges paragraphs 1-18.

20. OMB has wrongfully withheld agency records requested by Plaintiff, and has failed to comply with the statutory time limit under FOIA for rendering decisions on Plaintiff's administrative appeal.

21. Plaintiff has exhausted the applicable administrative remedies with respect to OMB's wrongful withholding of requested records.

22. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested records.

Requested Relief

WHEREFORE, Plaintiff prays that this Court:

- A. order OMB to process the requested records in their entirety immediately;
 - B. order OMB, upon completion of such processing, to disclose the requested records in their entirety and make copies available to Plaintiff;
 - C. provide for expeditious proceedings in this action;
 - D. award Plaintiff its costs and reasonable attorneys' fees incurred in this action;
- and

E. grant such other relief as the Court may deem just and proper.

Dated: December 12, 2011

Respectfully Submitted,



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